IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR
&
THE HONOURABLE MR. JUSTICE HARUN-UL-RASHID

FRIDAY, THE 7TH SEPTEMBER 2007 / 16TH BHADRA 1929

RCRev..No. 227 of 2004()

RCA.67/2002 of V ADDL. DISTRICT COURT, ERNAKULAM
RCP.52/1999 of I ADDL.M.C.,ERNAKULAM

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REV.PETITIONER(RESPONDENT IN RCA & RESP.IN RCP.

GEORGE PYLEE, AGED ABOUT 42,
S/O. PYLEE, KABALEESWARATH HOUSE,
KUREEKAD P.O., THIRUVANKULAM.

BY ADV. SRI.VARGHESE C.KURIAKOSE
SRI.JACOB SEBASTIAN
SRI.PRAVEEN K. JOY

RESPONDENT: APPELLANT IN RCA AND PETITIONER IN RCP.

K.K.SABU, AGED 38, S/O. LATE KURIAN,
KAROTTU VEEDU, THIRUVAMKULAM P.O.,
ERNAKULAM DISTRICT.

BY ADV. SRI.DINESH R.SHENOY

THIS RENT CONTROL REVISION HAVING BEEN FINALLY HEARD ON 18/08/2007, THE COURT ON 07/09/2007 PASSED THE FOLLOWING:

K. BALAKRISHNAN NAIR & HARUN-UL-RASHID, JJ.

R.C.Rev.No.227 of 2004

Dated, this the 7th day of September, 2007

ORDER

Harun-Ul-Rashid, J.

The revision petitioner herein is the respondent in RCA 67/2002 on the files of the Vth Addl. District Court, Ernakulam and the counter petitioner in RCP 52/1999 on the files of the Rent Control Court, Ernakulam. The Rent Control Petition was filed for eviction under sec.11 (3), 11(4)(i) and 11(4)(ii) of the Kerala Buildings (Lease and Rent Cotrol) Act (for short, the Act). The petition was dismissed by the Rent Control Court on all the grounds. In the appeal filed by the landlord, the Appellate Authority reversed the finding of the Rent Controller under sec.11(3) and confirmed the order under sec.11(4)(i) of the Act. The Appellate Authority also noted that the ground under sec.11(4)(ii) though raised was not considered, since it was not pressed. This revision petition was filed by the tenant being aggrieved by the order of eviction passed under sec.11(3) of the Act. The parties are hereafter referred to as the landlord and the tenant.

2. The brief facts leading to the passing of the impugned order are as follows:

The landlord's grandfather who was the original landlord let out the petition schedule building to the tenant on 1.10.1990 on a monthly rent of Rs.275/-. The period of lease was for two yars. After the death of the

grandfather and the landlord's father, the present landlord became the owner of the petition schedule building by virtue of the partition deed dated 1.3.1997. It is averred in the petition for eviction that the landlord is unemployed with no permanent source of income to meet his family requirements. Therefore he has decided to start a business in computer software development, exports and services. For that purpose a firm by name "M/s. Informatics India" was constituted and registered. The landlord, who is a MCA Degree holder, has got experience in the said field. The landlord intends to re-construct the petition schedule building for the purpose of starting a business in computer software developments since the petition schedule building is very old, dilapidated and most unsuitable for his business purpose.

3. The landlord further averred that the teant is conducting another business in the name and style "M/s. Nidhi Electricals" and the said business is accommodated in a building which is situated very near to the petition schedule building. The tenant has sublet the tenanted premises to one George and the said Geoge is presently running the business in the petition schedule building.

4. The revision petitioner/tenant objected the reliefs sought for in the petition for eviction, inter alia, contending that the need alleged is not bona fide, that the petition schedule building nor the locality in which the said building is situated is not suitable for starting a business in computer

software development, that the landlord owns and possesses other landed properties suited for the construction of commercial building, that the allegation that he had sublet the building to George is incorrect and that George is only his employee. He also contended that he is entitled to the benefit of protection under the second proviso to sec.11(3). The tenant admitted that he is conducting a business in the name and style "Nidhi Electricals" in another shop situated near the petition schedule building and that the business conducted in that shop is integrally connected with the business activities being carried on in the tenanted premises and therefore the petition schedule building is absolutely essential for the conduct of the said business.

5. The Rent Control Court received in evidence Exts.A1 to A17 on the side of the landlord, Exts.B1 and B2 on the side of the revision petitioner/tenant and examined the landlord as PW.1 and RWs.1 to 4 as tenant's witnesses. The court also marked Ext.C1 commission report and Ext.X1.

6. The Rent Control Court by order dated 18.12.2001 held that the petitioner is not entitled to an order of eviction under sec.11(3), 11(4)(i) or 11(4)(ii) and so, the Rent Control Petition was dismissed with costs. For disallowing the claim under sec.11(3), the Rent Control Court held that the landlord has got sufficient extent of land in the very same compound where he can construct a building to suit his convenience. The eviction

sought under sec.11(4)(i) was declined finding that there is no satisfactory evidence adduced by the landlord to show that the tenant had sublet the premises. Before the Rent Control Court also the eviction sought under sec.11(4)(ii) was not pressed and therefore not considered. After a detailed discussion of the evidence on record, both oral and documentary, the Rent control Court entered a finding stating that "it appears that the actual intention of the petitioner is to demolish the petition schedule building which is situated on the north-eastern corner of his entire property to provide a pathway to the plots on the western side of his residential property. Hence in these circumstances I find that the need set up appears to be doubtful and hence I find that the petitioner is not entitled to an order of eviction under sec.11(3)." Therefore, it is evident that the Rent Control Court did not enter into a positive finding as to whether the rquirement is bona fide or not. The concluding sentences as narrated above entering the finding regarding sec.11(3) show that the Rent Controller is not definite on the question whether the need alleged is bona fide or not. Therefore he did not record any positive finding, at the same time dismissed the claim under sec.11(3).

7. After hearing both sides in extenso, we find certain facts which are not in dispute. It is a fact not in dispute that the land lord is a qualified computer engineer and is the holder of MCA degree. It is also not in dispute that he was working abroad and returned to the locality in1998. He

was aged 34 at the time of filing RCP No.52/1999. As PW1, the landlord gave evidence that he is unemployed and he wanted to start a business of computer software developments in the building proposed to be constructed by him. According to him, unless the building is having sufficient space and convenience, it will not be possible for him to do the business in a suitable manner, that the present building is too old, dilapidated and too small and therefore not suitable for carrying on his proposed business. PW.1 also swears that he needs the petition schedule building to be reconstructed and for constructing the required area he wanted to demolish the petition schedule building. It is not disputed by the revision petitioner/tenant that the petition schedule building is old, outmoded and that a business in computer software developments cannot be conducted in the building. The revision petitioner/tenant has no case that this building is suitable for the purpose for which eviction was claimed. But the contention was that there are other suitable areas where the landlord can construct a building for the purpose of starting the proposed business. Ext.A7 plan produced by the landlord shows the nature and lie of the land, the site of the proposed new building and also the position of the petition schedule building. The Chottanikkara - Thiruvamkulam main road is situated on the eastern side of the poperty. It is the case of the landlord that unless the petition schedule building is demolished, he will not get the required area for constructing a building which he propose to

have for conducting his business. According to the revision petitioner/tenant, there is sufficient space in the compound lying towards south and west where the landlord can construct a building, if at all he requires to construct the same. Going by Ext.A7 plan and evidence, it can be seen that no road frontage is available for other portions of land so that a building can be constructed to suit his needs. The Appellate Authority had considered this question and entered a finding that the landlord is not in a position to construct a building suitable for his business purpose in any areas other than the area ear-marked for the reconstruction. We have noticed the length and breadth of the building having noted in the plan which would make it clear that it is not possible to construct a building of the plinth area as shown in the plan in the remaining area. The Appellate Authority also noticed the fact that if the site of the building is pushed towards south, still it will not be possible to accommodate that building in the remaining space. The Appellate Authority also noticed the fact that the site of the proposed building shown in Ext.A7 is lying to the north of the gate pointed out in paragraph 13 of the judgment and that the site of the building cannot be pushed towards south because of the location of the gate. The Appellate Authority also noticed the location of the septic tank and soak pit on the south-eastern corner of the land near to the road and entered a finding that it is not possible to shift the gate towards south also due to the existence of the septic tank and soak pit. These aspects are

elaborately considered by the Appellate Authority in the light of the contentions raised by the tenant that the landlord can construct a building having that much plinth area to the west of the petition schedule building and also on other spaces and that after the death of the landlord's mother, since he became the owner of the entire land, he can construct a gate at another place to have entry into the compound. We have noticed the fact that the area on the western side of the property as well as the land lying to the west of the tarwad house has no road frontage and therefore it would be too far fetched and unreasonable to direct the landlord that he should satisfy himself by constructing a building at an interior place having no road frontage at all. The only site suitable for constructing a commercial building having road frontage is the plot pointed out by the landlord. In such circumstances the case put forward by the landlord for constructing a building in the area shown in Ext.A7 plan, which will result in demolition of the petition schedule building, is reasonable, genuine and is a bona fide requirement which no court on facts and law can deny to a landlord. The tenant had pointed out and identified several plots in the property for the purpose of construction of a building for the landlord for housing his proposed business. All the locations pointed out by the tenant was examined by the Appellate Authority and found that those plots are not suitable to cater to the landlord's needs. The Appellate Authority also observed that the tenant cannot contend that the landlord should construct

a building for his business at a place which does not have road frontage since that would be against the business interests of the landlord, that it is for the landlord to judge as to how profitably the land or the building can be put to use, and that it would be too much for the tenant to contend that the landlord should construct his commercial building on the rear side of his residential building, that too at a place where there is no road frontage at all.

8. The contention of the revision petitioner/tenant is that the sole idea of the landlord is to get the petition schedule building demolished with a view to provide a pathway to persons to whom plots for house construction were assigned and therefore the need alleged is not bona fide. The said contention was also considered by the Appellate Authority in detail and on the basis of the facts, evidence, circumstances and materials on record found that the said contention is unfounded. The Appellate Authority in that regard held that after the execution of Ext.B1 and other documents the landlord's mother died and the tarwad house was subsequently pulled down and therefore it becomes easy for the landlord to provide a pathway almost through the middle of the entire plot and lying to the northern side of the property sold under Ext.B1 so that different assignees can easily make use of that pathway, that after the tarwad house was demolished it was perfectly within the right of the landlord to re-align the pathway to make it more convenient to the assignees of different

plots and that it has been done to see that so many bents and curves are avoided and therefore it cannot be said that Exts.A18 and A19 are created for the purpose of this case and that since the documents are executed subsequently and since those documents are required for a proper adjudication of the case, those two documents have been admitted in evidence. Admission of those documents are absolutely necessary for a proper adjudication of the case and therefore the Appellate Authority has rightly admitted and considered the effect of those documents also. The contention of the revision petitioner/tenant that the additional documents were admitted by the Appellate Authority without any basis and does not stand to legal scrutiny is not correct. The argument of the learned counsel for the appellant that the execution of Exts.A18 and A19 and the subsequent evidence on the basis of those documents are engineered by the respondent/landlord is also without any substance. It is contended that the requirement of the landlord is only 2500 sq. ft. and the area of the proposed building is about 2800 sq. ft. and therefore the construction of the proposed building in excess of 2500 sq. ft. is a pointer that there is no bona fides in seeking eviction under sec.11(3). The said contention is also correctly answered by the Appellate Authority in paragraph 15 of the judgment. Therefore, the Appellate Authority came to the conclusion that after the tarwad house was demolished, the pathway was straightened upto the gate leading to the wall on the east which would show that there

was nothing mala fide in executing those two documents on 5.2.2002.

9. The Commissioner in Ext.C1 report also reported the fact that considering the situation of the plot, gate and the length of the proposed building and the remaining land abutting the road, the proposed building can be constructed only after demolishing the petition schedule building. Admittedly, the landlord did not own or possess any other building space suitable for conducting a business in computer software development. Based on the elaborate reasons set out in the appellate judgment, the Appellate Authority found that the findings of the Rent Control Court that the landlord has got sufficient extent of land in the very same compound where he can construct a building to suit his convenience and that the real intention of the landlord is to provide a pathway to the persons to whom parcels of land were sold by the appellant are against the pleadings, evidence, admissions and facts proved in the case. The finding that the landlord is entitled to get an order of eviction under sec.11(3) provided the tenant is not entitled to get the benefit of protection under the second proviso thereto is legal and valid. The findings on facts leading to the grant of eviction under sec.11(3) is therefore not liable for interference under sec.20 of the Act.

10. The question regarding the benefit of protection under the second proviso to sec.11(3) was also found against the tenant. The Appellate Authority on facts held that the tenant is conducting another

business under the name and style “Nidhi Electricals” in shop No.9/582 of Thiruvankulam Panchayat near to the petition schedule building and therefore the tenant cannot contend that he is mainly depending on the income from the petition schedule building for his livelihood so as to claim protection under the second proviso. The Appellate Authority also noticed the fact that the tenant failed to produce documents to show what is the income he is getting from the business which is carried on in the petition schedule building and the income obtained from the business in Nidhi Electricals and also took note of the fact of admission by the appellant as RW.1 that his livelihood was on the business conducted in Nidhi Electricals. The Appellate Authority also noticed the admission of RW.1 that he is not, in fact, getting any income from the workshop conducted in the petition schedule building and that he is getting income only from Nidhi Electricals. With respect to the contention that there are no other suitable vacant building available in the locality for accommodating his business, the Appellate Authority relied on Ext.C1 Commissioner's report for recording the finding that certain vacant buildings are available in the locality. The Appellate Authority also noticed the fact that a building is available for occupation situated just opposite to the petition schedule building and another building about 50 metres away. It is contended by the learned counsel for the revision petitioner/tenant that since the Rent Control Court did not consider the question of protection under the second

proviso to sec.11(3), the Appellate Authority ought to have remanded the case for fresh consideration of the benefit of the second proviso to sec.11 (3). We have noticed that the Appellate Authority considered all the attendant circumstances, oral and documentary evidence adduced by the tenant while considering point No.2 which relates to the benefit of the second proviso to sec.11(3). The evidence on record was discussed in detail and appreciated in the right perspective. The request by the tenant is too tenuous to be countenanced. The Appellate Authority entered a positive finding that the evidence would show that there are vacant buildings available in the locality for getting on rent. The findings of fact entered by the Appellate Authority that the revision petitioner/tenant is not entitled to get the benefit of the second proviso to sec.11(3) also does not call for any interference under sec.20 of the Act.

11. The mixed question of fact and law arising for consideration in this case is whether the eviction sought for is for using the building occupied by the tenant after its demolition for the purpose of reconstruction of a new building for occupation of the landlord for running his new business is a bona fide need under sec.11(3). It is contended on behalf of the tenant that the bona fide need for own occupation of a building has to be confined to the need of the building itself; to put it otherwise, the landlord's claim for eviction sought for demolition of the building and to occupy the space for putting up another building will not

come within the purview of sec.11(3) of the Act. Our considered view is that if the landlord bona fide needed the building for demolition for the purpose of reconstruction, the landlord is entitled to recover possession of the building notwithstanding the fact that he has to demolish the present building and reconstruct it for the purpose of such occupation; that does not mean that the landlord's claim for eviction is not governed by sec.11(3) of the Act. The meaning of the word “building” as per the definition under the Act and also in ordinary language comprises not only the fabric of the building, but the land upon which it stands. The need contemplated under sec.11(3) of the Act will encompass any other need for which the building is used and it also envisages the demolition of the building and using the space occupied by the building.

12. Sec.11(3) of the Act under similar circumstances was the subject matter of interpretation in the decisions of the Apex Court and several decisions of this court. A case of demolition of the tenanted building and putting up a new building by the landlord was found to be not outside the ground for bona fide need for own occupation in a similar provision by the Supreme Court in the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 - AIR 1964 SC 1676. In *P.A.Mohammed Kanhu v. H.A.Assanar Kanju (1965) 1 KLR 323*, this Court held that the fact that the building requires reconstruction for the purpose of occupation does not mean that the landlord does not require it for his own occupation

and that the purpose of the occupation may be such that the building may have to be demolished and reconstructed; that does not mean that the landlord's claim is not under sec.11(3). In *Sarada v. M.K.Kumaran - 1969 KLT 133* it was held that the bona fide need for own occupation under sec.11(3) of the Act would take in if the need is to provide a passage through the site on which the original structure stood after its demolition. In *Krishna Menon v. District Judge - 1988 (1) KLT 133* also in an identical situation this court held that if the landlord wanted demolition of the building occupied by the tenant for the purpose of providing car parking areas for the multistoreyed building constructed in the rear portion of the building in question, the need contemplated under sec.11(3) of the Act is attracted. Again, in *Daniel and others v. M.G. George - 1993(2) KLJ 686* this court held that the building space occupied by the tenant has to be vacated enabling the landlord to demolish it and utilise the space after demolition as a parking space for vehicles, will come under sec.11(3). In *Narayanankutty v. Abida Abdul Kareem - 2002 (2) KLT 507* this court upheld the order of eviction sought for by the landlord of the tenanted premises so as to use it as a pathway for the proposed multistoreyed building and held that a reading of sec.11(3) and the definition clause in sec.2(1) would show that tenanted premises as well as the garden, grounds, wells, tanks and structures, if any, appurtenant to such building, hut, or part of such building or hut etc. would come within the scope of

sec.11(3).

13. R.C.Rev.No.267/2007 (K.G.Boban v. SNDP) and connected cases disposed of by us on 20.8.2007 was a case for eviction in which the bona fide need urged is for demolition of the petition schedule building for providing convenient space (open ground) for devotees who used to attend the Sree Narayana Guru Mandiram located in the same compound towards the south of the tenanted premises. We have found that the space occupied by the tenanted premises and the surrounding space is needed by the landlord for ear-marking the same to suit the convenience of devotees who are regular visitors to the Sree Narayana Guru Mandiram on important festival days.

14. The appellant's contention that the landlord is entitled to get an order of eviction under sec.11(4)(i) was also examined in detail by the Appellate Authority. The Appellate Authority on facts found that the sub-tenancy and the conduct of business by the alleged sub-lessee is not proved. The Appellate Authority on facts found that there is absolutely no acceptable evidence to hold that the petition schedule building was subleased as alleged by the landlord. The said finding is not challenged by the landlord by filing any revision petition or cross-objection in R.C.Rev.No.227/2004. The said finding also does not call for interference.

In the result, the revision petition fails and therefore dismissed with costs. The revision petitioner/tenant is granted two months' time to vacate

the premises on condition that he shall file an affidavit in the form of an undertaking to vacate the premises within two months from today. The affidavit shall be filed before the executing court within a period of one month from today. The time is granted on condition that the revision petitioner/tenant shall pay the arrears of rent, if any, and the rent till the date of vacating the premises.

K. BALAKRISHNAN NAIR
JUDGE

HARUN-UL-RASHID,
JUDGE.

mt/

I.A.No.1946 of 2007

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DISMISSED

7.9.2007 Id/-K.Balakrishnan Nair, Judge.

Id/- Harun-Ul-Rashid, Judge.